DOCUMENT RESUME

ED 137 908 EA 009 376

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TITLE Proposed School Board Regulations Governing Access and Maintenance of Teacher Personnel Records. Revised.
INSTITUTION North Carolina Univ., Chapel Hill. Institute of Government.
PUB DATE 76
NOTE 14p.; For a related document, see ED 085 882

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS *Board of Education Policy; Confidential Records; Elementary Secondary Education; *Models; *Personnel Data; *Recordkeeping; *Teachers

ABSTRACT

This booklet presents model regulations governing the maintenance and control of teacher personnel records that are appropriate for possible adoption by North Carolina school boards. The model regulations are designed to implement the statutory requirements of the North Carolina Teacher Tenure Act, as amended by the 1973 General Assembly. The regulations contain five sections that deal with maintenance of records, additions to the personnel file, general access to a personnel file, an individual's access to his personnel file, and procedure. Each section of the regulations is followed by a comment explaining or clarifying its intent. (JG)

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ED137908

APR 11 RECD

EA 009 376

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Revised Winter 1976

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A growing concern about public access to a teacher's personnel file and the teacher's right to privacy has led to the inclusion of a provision in the North Carolina Teacher Tenure Act (G.S. 115-142) requiring school boards to adopt written regulations for handling teacher records. The following are regulations that if adopted by local school boards will implement the statutory requirements of the tenure act. These regulations, written in June 1972, have been revised to include the statutory amendments made by the 1973 General Assembly.

The proposed regulations contain several sections, each followed by a comment explaining or clarifying its intent. In some cases the comments are essential to the meaning of a section; should the section be adopted, the comments should be adopted with it. Generally, however, the comments are simply explanatory and should not be adopted along with the section.

Bracketed material indicates an option for the school board. Options are provided when one or more reasonable alternatives are available.

Several people--including school board members, teachers, and administrators--reviewed these proposed regulations. Their comments and suggestions were invaluable and are very much appreciated.

SECTION 1. MAINTENANCE OF RECORDS

a. Personnel File

The _____ administrative school district shall maintain a personnel file for each teacher and administrator [teacher, administrator, and employee] employed.

The personnel file shall include all records and documents collected and retained by the school concerning the teacher or administrator, including:

1. evaluation reports made by the administration;
2. commendations of and complaints against the teacher or administrator made by the administration;
3. written suggestions for corrections and improvements made by the administration;
4. teacher certificates;
5. health certificates;
6. standard test scores;
7. academic records;
8. application forms;
[9 pre-employment references;]
10. all other records kept about a teacher or administrator [teacher, administrator, or employee].

b. Location of File

The personnel file shall be maintained in the office of the superintendent.

Comment: The Teacher Tenure Act, G.S. 115-142(b),

sets out these requirements for the teacher's personnel file:

> . . .The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file.
>
> The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher.

This section implements the above statute by requiring teacher personnel files to be kept and sets out the types of information to be included in them. The statute requires maintenance of a personnel file for each teacher. Teacher is defined by G.S. 115-142(a)(9) to mean any person who holds at least a current, not expired, Class A certificate or a regular vocational certificate, whose major responsibility is to teach or directly supervise teaching, or who is classified by the State Board of Education or paid as a classroom teacher, and is employed in a full-time, permanent position. The term includes supervisors, principals, and department directors. Superintendents, however, are excluded.

Although superintendents are excluded from the

application of the tenure act, there is no reason that the record-keeping procedure for them should be different from that for teachers and principals; therefore, the regulation applies to superintendents, associate superintendents, and assistant superintendents. Some school boards may want to handle nonprofessional employee personnel records in the same manner as teacher personnel records. For this reason, "teacher, administrator, or employee" is included in brackets in the first paragraph of the statute. Since the statute does not apply to nonprofessional employee personnel records, the bracketed portion is optional.

The statute gives the school board the option of keeping pre-employment data in a file separate from the personnel file that is not made available to the teacher. To allow for this option, item number 9, "pre-employment references," is bracketed. (Technically other kinds of pre-employment data such as application forms and academic records could be kept in the separate file, but there is no reason to keep that information separate from other personnel information.) If the board decides to keep the pre-employment references in a separate file, that information may not be used in a hearing to demote or dismiss the teacher. Only that information kept in the personnel file that is made available to the teacher may be used in a demotion or dismissal hearing.

Maintaining one file with all the records seems preferable for policy reasons. The existence of two files may cause the teacher to suspect that the second file contains information prejudicial to him. The advantages of keeping the teacher from seeing this file may not outweigh the damage that could result from a morale problem in the school system. Besides, keeping the pre-employment references in a separate file means they could not be used in any demotion or dismissal hearing. Another advantage to opening records to persons about whom they are kept is that the accuracy of the records is assured. If the board is concerned about maintaining the confidentiality of the pre-employment references, the best policy would be to destroy the references after the board has decided to hire a teacher.

Listing the types of records to be kept in the personnel file does not mandate that all of those items must in fact be kept by the school district; rather, the regulation means that if any of those types of records listed are kept, they must be included in the personnel file.

This regulation does not prevent the principal from keeping a copy of any evaluation he has written for his personal file. However, the personnel file maintained in the superintendent's office is the official one.

SECTION 2. ADDITIONS TO THE PERSONNEL FILE

No evaluation, commendation, complaint, or suggestion may be placed in the personnel file unless it meets the following requirements:

a. The comment must be signed and dated by the person making the evaluation, commendation, complaint, or suggestion; and

b. The superintendent or the teacher's principal must have notified the teacher or administrator by letter or in person that the comment is available for inspection at least five days before it is placed in his or her personnel file.

The teacher or administrator [teacher, administrator, or employee] shall sign or initial the evaluation, commendation, complaint, or suggestion written about him to indicate that he has inspected it.

The teacher or administrator [teacher, administrator, or employee] may offer a denial or explanation of the evaluation, commendation, complaint, or suggestion, and any such denial or explanation shall become a part of his personnel file.

Comment: This section implements the requirements of G.S. 115-142(b) concerning the addition of complaints and evaluations to the file. The teacher's signature or initial on the comment concerning him is not required by statute but will help establish that the teacher had an opportunity to read the comment. The teacher's signature or initial indicates only that he has read the comment and not that he agrees with it.

SECTION 3. GENERAL ACCESS TO A PERSONNEL FILE

Access to a personnel file may be permitted to the following persons without the consent of the teacher or administrator [teacher, administrator, or employee] about whom the file is maintained:

a. Those school officials involved in the evaluation process of the individual, and the board of education if its examination of the file relates to the duties and responsibilities of the board.

b. Members of the review panel of the Professional Review Committee if the teacher has requested a review by them in a demotion or dismissal procedure.

No other person may have access to a personnel file except under the following circumstances:

a. When the teacher or administrator [teacher, administrator, or employee] gives written consent to the release of his records. The written consent must specify the records to be released and to whom they are to be released. Each request for consent shall be handled separately; blanket permission for release of information shall not be accepted.

b. When the records have been subpoenaed or sought by court order.

Comment: There has been confusion in North Carolina as to whether teacher personnel records fall within the North Carolina public records statute, G.S. 132-1, and are therefore open to inspection by any person. No North Carolina judicial decision has interpreted the statutory definition of a public record, but several Attorney General's opinions have given a broad, liberal interpretation to the statute. Under these interpretations, practically all records kept by public officials are public records, and inspection is cut off only by a specific statute requiring a certain type of record to be kept confidential. G.S. 115-142(b) is such a statute. It prohibits inspection by the public except by those persons granted access under rules and regulations adopted by the school board and allows the board to deny a teacher access to his pre-employment data. This section implements G.S. 115-142(b) by establishing regulations governing access.

Since the U.S. Supreme Court decision in Griswold v. Connecticut, 381 U.S. 479 (1965), there has been much litigation and legal discussion about an individual's right to privacy. [See A. Miller, The Assault on Privacy: Computers, Data Banks, and Dossiers (1971); A. Westin, Privacy and Freedom (1968).] The legal analysis emerging is that a teacher has a right to privacy that must be balanced with the school's need to collect certain personal information about him in order to carry out its educational function. School officials who have a proper need to know can collect and use information even if doing so violates the teacher's privacy. On balance, the need for certain school officials to have such information is more important than the teacher's privacy. Based on this reasoning, the regulation gives those school officials who are involved in the evaluation process, such as the teacher's principal or the superintendent, access to the personnel files without the consent of the individual about whom the file is maintained. Others, such as credit lenders, prospective employers, or other teachers, cannot present a proper educational purpose for examining or using such information that would allow an invasion of

privacy. For these other people, access to the file should be granted only with the consent of the person about whom the file is maintained.

SECTION 4. INDIVIDUAL'S ACCESS TO HIS PERSONNEL FILE

A teacher or administrator [teacher, administrator, or employee] may have access to his own personnel file at all reasonable times.

The right to access includes the right to make written objections to any information contained in the file. Any written objection shall be signed and dated by the teacher or administrator [teacher, administrator, or employee], and it shall become part of his personnel file.

Comment: Again the statute does authorize the board to adopt a policy of keeping pre-employment references in a separate file not made available to the teacher. But if the board does keep a separate pre-employment file, the information in that file may not be used in any dismissal or demotion hearing.

This section provides that records shall be open for inspection at all reasonable times as required by G.S. 115-142(b). Reasonable times means during regular office hours.

SECTION 5. PROCEDURE

The superintendent shall have the over-all responsibility for maintaining and preserving the confidentiality of teacher personnel files. He may, however, designate another school official to perform these duties for him.

The superintendent or his designee is responsible for granting or denying access to records on the basis of these regulations.

Comment: This section puts the responsibility for maintaining the records and implementing these regulations on the superintendent either directly or through his designee.

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